IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

CIVIL APPLICATION NO.3914 OF 2006
IN
FIRST APPEAL (ST) NO.21434 OF 2006

Bansilal T. Kadam Petitioner
vs.
1. Sanjeevani Eknath Patil & ors. Respondents

Mr.A.S.Kulkarni for the appellant/applicant.

Mr.S.M.Dange for respondent no.2.

CORAM : ANOOP V. MOHTA,J.

DATED : 28th August, 2007

P.C.

This is an application for condonation of delay in filing the first appeal to the extent of 5 years and 194 days.

2. The contesting respondents are served. There is no reply to the averments made therein.

3. This is a peculiar case where though the applicant, who sold his Rickshaw bearing no.MTL-4337 on 13.4.1986 to respondent no.12, by the impugned order, the Motor Accidents Claims Tribunal, Sangli (the Tribunal) held him along with others jointly and severally liable to pay Rs.2,39,000/-. The applicant has already in view of the order passed by this Court deposited Rs.2 lakhs in the trial Court.

4. Though served, the appellant unable to contest the main claim petition before the Tribunal except by filing written statement. The relevant para 4 of the application reflects as under:

"4. The petitioner states that, the petitioner appeared in the said matter before the learned Presiding Officer of the Motor Accident Claim Tribunal through his advocate,. The petitioner also filed his written statement in the matter interalia denying the claim of the respondent no.1 to 5 as he has nothing to do with the said Auto rickshaw since he already sold it to respondent no.12. The petitioner states that the petitioner also handed over the relevant documents to his advocate for filing them in the evidence. However, at the time of filing the documents in evidence the advocate appointed by the petitioner remained absent and the said documents were remained to be filed on record. Due to unavoidable circumstances the petitioner was also absent in the court. The petitioner states that, on 20.11.2000, the learned Presiding Officer of the Motor Accident Claim Tribunal proceeded with matter and passed an Ex parte order accepting the claim of respondent no.1 to 5. The learned Judge also held petitioner as responsible and directed him to pay the compensation of Rs.2,39,000/- to the respondent no.1 to 5."

5. Admittedly, the accident took place on 24.4.1989 after a period of two years from the date of sale of the said auto-rickshaw. The applicant, therefore, was not the owner of the said vehicle on the date of accident.

6. On 22.2.2002 on filing of the execution petition, the Tribunal issued notice on 29.5.2002 on the old address of the applicant. The notice returned back with endorsement that the applicant had already left the house some time in the year 1991. On 10.9.2004 the applicant received notice of the execution petition. The applicant came to know for the first time about the same alleged exparte order directing him to pay the amount of the compensation with 12% interest.

7. The appellant-applicant thereafter made enquiry and came to know about this order and the reason for the execution.

8. Considering the facts and circumstances as reflected above, I am of the view that there is sufficient cause shown by the appellant-applicant, apart from the merit, to condone the delay in filing the present first appeal.

9. Even on merits, as contended, if case is made out by

the applicant, such execution against the applicant would cause great injustice and hardship. Any way, at this state of the proceeding, I am inclined to grant prayer (a).

10. So far as other prayers are concerned, the applicant has already taken out separate application for stay.

11. The appeal be listed for admission after due registration.

12. Civil application is disposed of accordingly.

[ANOOP V. MOHTA,J.]